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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. (C) No. 6860 of 2006

Petitioner : Deshraj Chaudhary

Versus

Respondents : Deepak Kumar Saraf

Post for order on 25th March, 2007.

Sd/-
Satish K. Agnihotri
Judge

(99)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (C) No. 6860 of 2006

Petitioner Defendant	Deshraj Chaudhary, S/o Late Baburam Chaudhary, aged about 72 years, Resident of Link Road, Bilaspur, at present residing at village Abhepur, District Una (Himachal Pradesh)
Versus	
Respondent Plaintiff	Deepak Kumar Saraf, S/o Moti Lal Saraf, aged about 46 years, resident of Link Road, Bilaspur (C.G.)

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri S. I. Ali, Advocate for the petitioner.

Shri Neeraj Choubey, Advocate for the respondent.

ORDER

(Passed on this day of March, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. By this petition filed under Article 227 of the Constitution of India, the petitioner challenges the legality and validity of the order dated 9.11.2006 (Annexure P/8) passed by the First Civil Judge, Class-I, Bilaspur, in Civil Suit No. 4-A/90 (Deepak Kumar Saraf Vs. Deshraj Choudhary), wherein the application filed under Section 10 of the Code of Civil Procedure (hereinafter referred to as 'C.P.C.'), for staying the said proceedings of the civil suit, was rejected.
2. The respondent/plaintiff instituted a civil suit bearing C.S.No. 4-A/90 on 15.4.1990 in the Court of First Civil Judge-I, Bilaspur, for recovery of rent, damages and ejectment of the petitioner/defendant from the suit premises under the provisions of the Chhattisgarh Accommodation Control Act, 1961 (for short 'the Act, 1961'), on the ground interalia, that the respondent/plaintiff requires the house for bonafide need.
3. The father of the respondent instituted a title suit in the Court of 4th Civil Judge Class-II, Bilaspur on 15.1.1990, the same was transferred to the

Court of First Civil Judge Class-I, Bilaspur, impleading the respondents and others as party defendants, bearing Civil Suit No. 6-A/94.

4. The present petitioner filed an application in suit No. 4-A/90 under section 10 of the C.P.C. for staying the proceedings in view of the pendency of the title suit. The said application was allowed on 12.10.1992 and the proceedings under the provisions of the Act, 1961 was stayed. The Suit No. 6-A/94, filed by the petitioner was decreed by the judgment and order dated 15.7.2005 (Annexure P/4) passed by the First Civil Judge, Class-I, Bilaspur, declaring that the petitioner as the owner of the suit house and the Municipal Corporation was directed to make necessary amendments in the relevant records.

5. The father of the petitioner preferred a Civil Appeal No. 3-A/2005 against the judgment and decree dated 15.7.2005 before the District Judge, Bilaspur. The appeal was allowed vide judgment and order dated 28.2.2006 (Annexure P/6) and the suit filed for title by the petitioner was dismissed. The petitioner has preferred a Second Appeal No. 232/2006 before this Court.

6. After the order dated 28.2.2006, passed by the District Judge Bilaspur, whereunder, the title suit filed by the petitioner was dismissed, the petitioner filed an application under Section 10 of the C.P.C. in Civil Suit No. 4-A/90 praying that the proceedings be stayed till the disposal of the second appeal.

7. Learned Civil Judge, after having considered all the facts, particularly the fact that by judgment and order dated 28.2.2006 passed in Civil Appeal No. 3-A/2005, by the District Judge, the title suit, filed by the petitioner stood dismissed. The High Court in Second Appeal No. 232/2006 has not passed any interim order staying the operation of the judgment and order dated 28.2.2006 passed in Civil Appeal No. 3-A/2005. The petitioner, thereafter filed the present application under section 10 of the C.P.C. for staying the proceedings in Civil Suit

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No. 4-A/90 in view of the pendency of the Second Appeal in this High Court.

8. I have hard learned counsel for the parties.

9. Admittedly, the title suit filed by the petitioner has been dismissed by the District Judge vide judgment and order dated 28.2.2006 passed in Civil Appeal No. 3-A/2005, thus the suit for eviction filed by the respondent is to continue till any other order staying the effect and operation of the order dated 26.2.2006 is passed in Second Appeal. There is no infirmity, illegality or jurisdictional error, noticed in the impugned order dated 9.11.2006. This Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India should refrain itself from interfering with the order passed by the Court below, except in such cases where perversity, illegality, irregularity or jurisdictional error is writ large on the face of the record, which is not in the present case.

10. As a result, in view of the foregoing, this petition is dismissed. no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur